

In the Matter of License No. 41652 and Merchant Mariner's Document No. Z-249026
Issued to: WILLIAM D. BIRD

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WILLIAM D. BIRD

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec.137.11-1.

By order dated 27 February 1956, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended License No. 41652 and Merchant Mariner's Document No. Z-249026 issued to William D. Bird upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Junior Third Mate on board the American SS RUTH LYKES under authority of the license above described, on or about 18 April 1955, while said vessel was in the port of Cebu, Cebu Island, Philippine Islands, he failed to perform his duty by being asleep on port watch.

At the hearing in Houston, Texas, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to the charge and specification proffered against him.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the Master and Chief Mate of the ship at the time of the alleged offense.

In defense, Appellant offered in evidence his testimony. He stated that he was awakened less than an hour after he had left the deck in order to each lunch at 1220, and that he was entitled to one hour off duty for lunch.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and having considered the proposed findings of fact and conclusions submitted by counsel for Appellant, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's License No. 41652, Merchant Mariner's Document No. Z-249026, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months on six months' probation.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 18 April 1955, Appellant was serving as Junior Third Mate on board the American SS RUTH LYKES and acting under authority of his License No. 41652 while the ship was loading cargo at Cebu, Cebu Island, Philippine Islands.

On this date, Appellant was on duty between 0800 and 1600. The native stevedores commenced leaving the ship at 1200 for a one hour lunch period. Appellant remained on deck until the last stevedore left the ship at 1220. Appellant then ate lunch and went to sleep in his bunk.

At approximately 1310, Appellant was awakened by the Master. Appellant was not aware that the Master and Chief Mate had gone ashore at 1130 and remained there until about 1300.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that by contract with the various steamship companies, a licensed officer is entitled to a full hour for lunch - until 1320 in this case. Also, there were no stevedores at work on the vessel at 1310 and, therefore, there were no duties for Appellant to perform at this time.

APPEARANCES: Messrs. Mandell and Wright of Houston, Texas, by Arthur J. Mandell, of Counsel

OPINION

Appellant was the officer on watch and he was responsible for the general safety of the ship in addition to the specific loading operation then in progress. Since Appellant was not relieved of his duties for the full hour agreed to in the contract while in port, it was his duty to remain awake and alert, particularly for any emergency, even though there were no specific duties to be performed immediately. As stated in the contract, he would be entitled to one hour's penalty pay if not allowed the full hour for lunch. It is my opinion that the specification was proved by substantial evidence and that the order should be upheld.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 27 February 1956, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 10th day of September, 1956.